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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Petition of the
Connecticut Department of Public Utility
Control for Amendment to Rule Making

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(RM No. 9258)
DA 98-743

REPLY COMMENTS OF
SBC WIRELESS, INC.

SBC WIRELESS, INC.

Bruce E. Beard
Jeanne A. Fischer
13075 Manchester Road, 100N
St. Louis, MO 63101
(314) 984-2010

Carol L. Tacker
Vice President & General Counsel
17330 Preston Rd., Ste. 100A
Dallas, TX 75252
(972) 733-2005

Betsy Granger-Stover
General Attorney
4420 Rosewood Drive
Pleasanton, CA 94588
(510) 227-3140

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SUMMARY

The Commission has consistently held that service specific overlays are discriminatory and unlawful under the Communications Act. The majority of the parties filing comments oppose a change in the Commission's established practice of nondiscrimination in regards to allocation of numbering resources. The few parties who suggest the Commission should reverse itself fail to cite any credible change in circumstances or statute to support such extraordinary action. Further, the comments demonstrate that wireless specific overlays would provide minimal relief, would result in a waste of numbering resources and would eliminate any possibility of wireless being an effective competitor to wireline.

The Commission should not institute a rulemaking. Rather, the Commission should continue its practice of nondiscriminatory treatment and should continue to explore other numbering conservation measures with the input of the state commissions, state consumer groups and the industry through the Numbering Resource Optimization Working Group and the North American Numbering Council.

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SBC Wireless, Inc. files this reply to comments regarding the Connecticut Department of Public Utility Control's Petition to reverse the Commission's long standing prohibition on discriminatory treatment in the allocation of numbering resources. This Commission has consistently held that service specific overlays are discriminatory and unlawful under the Communications Act.¹ The majority of the comments oppose a change in the Commission's established practice of nondiscrimination. Those few comments that support a change fail to cite any credible change in circumstances or statute that would legitimize such an extraordinary act as the Commission reversing itself and allowing service specific overlays. Rather, those supporting a reversal claim that NXX exhaust is being caused by wireless and thus the wireless carriers and customers should bear the burden of relief,² that imposing the burdens of relief on wireless customers and carriers is less burdensome and more expedient than technology neutral forms of

¹ In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98); Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers (CC Docket No. 95-185); Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas (NSD File No. 96-8); Administration of the North American Numbering Plan (CC Docket No. 92-237); Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois (IAD File No. 94-102), paras. 285, 304-308, Second Report and Order and Memorandum Opinion and Order (Released August 8, 1996). ("Telecommunications Act/NPA Relief Order"); In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, IAD 94-102, Declaratory Ruling and Order, para. 27-28, 35 (Released January 23, 1995). ("Ameritech Order"); In the Matter of the Need to Promote Competition and Efficient Use of the Spectrum for Radio Common Carrier Services, 59 Rad. Reg. 2d (P&F) 1275, Memorandum Opinion and Order, Appendix B, FCC Policy Statement on Interconnection of Cellular Systems, para 4 (Released March 5, 1986).

² Comments of the Ad Hoc Telecommunications Users Committee ("Ad Hoc"), pp. 1-2, 4-5; Comments of State Advocates ("State Advocates"), p. 6-7.

relief,³ that service specific overlays are desired by the public⁴ and that wireless does not compete with wireline⁵. These are the same arguments that the Commission rejected in the Ameritech Order proceeding and the Telecommunications Act/NPA Relief Order proceeding.⁶ These same factors were present in 1986 when the Commission issued its Policy Statement on Cellular Interconnection, in 1994 when the Commission issued its Ameritech Order expressly stating that service specific overlays violate the Communications Act, and in 1996 when reaffirming the Ameritech Order and implementing the Telecommunications Act of 1996.⁷

Proponents of a reversal of the Commission's past decisions also note that there is an increasing need for NPA relief and that various numbering conservation proposals are being developed. Such facts, however, do not equate to a basis for the Commission to reverse itself and suddenly declare that wireless-only overlays do not violate the Communications Act. Rather, as PageNet notes, the Commission should continue the course it has initiated: to develop national conservation methods by supporting the North American Numbering Counsel (NANC) and encouraging the states, members of industry and consumers to work together on numbering conservation issues under the auspices of NANC and the Numbering Resource Optimization Working Group.⁸

³ Ad Hoc, pp.11-12; State Advocates, p. 5; Comments of the Public Utility Commission of Texas ("Texas PUC"), p. 5-6.

⁴ Texas PUC, p. 5-6; State Advocates, p. 5.

⁵ State Advocates, pp. 9-10; Ad Hoc, p. 9-10; Texas PUC, pp. 4-5.

⁶ See, e.g. Opposition of Illinois Bell To Request for Declaratory Ruling and Interlocutory Order, IAD 94-102 (Ameritech Order proceeding) arguments made-- "given that largest proportion of demand for new codes in the 708 NPA were coming from wireless (65%) their use of 312 would decrease the demand for new 708" p. 3, "Wireless devices (unlike virtually all other of telecommunications equipment) do not have a fixed geographic location" p. 3, "an overwhelming majority of customers clearly stated that they can most easily understand and most conveniently use a dialing plan under which all wireless calls are routed to a single overlay NPA while the existing NPAs continue to maintain their geographic identities" p. 6; "most customers will not be required to reprogram their PBXs, automatic dialers and other systems to reflect the need to dial additional digits" p. 7. See also, Area Code Relief Plan for Dallas and Houston, ordered by the Public Utility Commission of Texas, NSD File No. 96-8, PUCT Petition (filed May 9, 1996) wireless overlay enjoyed "overwhelming support from the affected public", p. 7.

⁷ See, fn. 1 supra.

⁸ Comments of Paging Network, Inc. ("PageNet"), pp. 6, 9.

The Commission should not initiate a rulemaking, rather it should continue to prohibit discriminatory treatment in the allocation of numbering resources.

I. ATTEMPTS TO BLAME THE WIRELESS INDUSTRY ARE UNFOUNDED AND MISDIRECTED.

A few of the commentators advocating reversal claim that the increased need for NPA relief is caused by the wireless carriers and argue that this justifies reversal of the Commission's prohibition of service specific overlays.⁹ Ad Hoc, for example, makes the unsupported statement that "Cellular and wireless service demand for telephone numbers is the single largest source of stress on the nation's stock of numbering resources".¹⁰ State Advocates similarly assert "In many respects, the exhaustion of telephone numbers has been predominantly driven by the growth experienced by mobile carriers".¹¹

Even if this claim were true this Commission has already rejected the notion that the largest taker or most recent taker of NXXs should be blamed or punished by being forced to return all numbers and being segregated to a separate NPA. Proponents of the original Ameritech wireless-only overlay contended that the overlay was justified because "the largest proportion of recent demand for NPA 708 numbers has come from wireless carriers".¹² The Commission flatly rejected that argument noting that "Regardless of the particular industry segment making the most requests for numbering resources at any particular time, Ameritech (in its role as the local number administrator) must treat all applicants for such codes in an impartial manner, providing telephone number resources in accordance with the Act".¹³

⁹ Ad Hoc, pp. 2-5; State Advocates, p. 6-7, 8.

¹⁰ Ad Hoc, p. 2.

¹¹ State Advocates, p. 8.

¹² Ameritech Order, para. 23.

¹³ Id., para. 28.

Further, claims that wireless is the primary cause of the increased need for NPA relief are unfounded. Ad Hoc makes the bald assertion that “wireless carriers are using assigned NXXs even more inefficiently than other carriers”.¹⁴ In apparent support for such assertion Ad Hoc states that “only 7,593 NXXs had been assigned to CLECs” whereas wireless has been assigned 19,000 NXXs. First, NXX assignment does not equate to how efficiently a provider is using numbers within those NXXs—in other words it is the fill factor or quantity of numbers assigned in an NXX which determines the efficient use of numbers. Also, Ad Hoc’s pleading is misleading in that it compares the 19,000 NXXs assigned to wireless to a claimed estimated total of 59 million “wireless” customers. While the 19,000 NXXs assigned seemingly includes paging, the 59 million customer count does not. As the Commission recognized and included in its Second Report on CMS Competition there were 44 million mobile telephony subscribers and 34 million paging subscribers at the end of 1996.¹⁵ Further, simple history and common sense indicate that such NXX totals do not support a conclusion that wireless is using its numbers inefficiently. Cellular has been commercially available for approximately 14 years. Paging likewise is not an industry in its infancy in the marketplace. In addition, since 1995, 3-6 new mobile telephony competitors are up and running in the major wireless markets. On the other side, the number of CLEC NXXs are the result of assignments made primarily since the passage of the Telecommunications Act of 1996. For example, while the State Advocates cite statistics about the number of NXXs assigned to wireless carriers in the St. Louis 314 NPA,¹⁶ they omit the most relevant fact—despite active competition from 5 major wireless two way voice carriers¹⁷ and

¹⁴ Ad Hoc, p. 5.

¹⁵ Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Second Annual Report, Released March 25, 1997. The press release for the Third Annual Report released May 14, 1998 indicates 55.3 million mobile telephony subscribers and 49.8 million cellular customers at the end of 1997.

¹⁶ State Advocates, p. 6.

¹⁷ SWB Wireless, Ameritech Cellular, Nextel, Sprint PCS and AT&T Wireless.

numerous paging carriers--in 1997 wireless carriers (cellular, paging, SMR, PCS) requested and were assigned a total of only 18 NXXs whereas the CLECs (who had 0 NXXs going into 1997) requested and were assigned 34 NXXs.

As explained by SBC Wireless and several other commentors, wireless is one of the most efficient users of their assigned numbers because they do not have to emulate landline rate centers.¹⁸ As the State Advocates recognize, wireless carriers “may provide service to their entire serving area from a single or a few locations within that area where they interconnect with the facilities of the wireline providers” and thus “wireless carriers are assigned NXX codes based upon those exchanges where interconnection occurs, but the use of those NXXs is not limited to a single exchange”.¹⁹ Thus, wireless carriers traditionally have had high fill factors for their NXXs and make efficient use of their numbering resources. As the Association for Local Telecommunications Services noted in the Ameritech Order proceeding, the creation of a “penalty box” NPA for wireless customers generates considerable burdens for wireless providers.²⁰ To punish the wireless industry by imposing the costs associated with a take-back of numbers, including reprogramming costs, and segregating them to a separate area would be terribly ironic given its efficient use of the numbering resource.

¹⁸ Comments of SBC Wireless, pp. 8-9; Comments of the Cellular Telecommunications Industry Association (“CTIA”), pp. 10-12; Comments of Sprint PCS, pp. 3.

¹⁹ State Advocates, p. 6.

²⁰ Comments on Paging Petitioners’ Request for a Declaratory Ruling and Interlocutory Order by the Association for Local Telecommunications Service, IAD No. 94-102, p. 5 (filed Sept. 16, 1994).

II. WIRELESS-ONLY OVERLAYS WOULD PROVIDE LITTLE RELIEF AND RESULT IN A WASTE OF NUMBERING RESOURCES.

Imposing service specific overlays would result in a waste of numbering resources.

Proponents of the Commission reversing itself contend that allowing service specific overlays would result in saving NXX codes in existing NPAs and thus extending the life of such NPAs.²¹

What the proponents overlook is what the Commission noted in the Telecommunications Act/NPA Order--what extends the life of an NPA "is not so much the wireless-only overlay as the introduction of a new NPA with its 792 NXXs".²² Further, the proponents demonstrate the limited relief that would be gained through implementation of a wireless-only overlay. For example, the State Advocates note that imposing a wireless-only overlay for the St. Louis 314 NPA would save an estimated **49 NXX codes over the next two years**—in 1997 wireless took only 18 NXXs, whereas CLECs took 37 NXXs and wireline took an additional 12 for a total of **49 in one year**.²³ The Texas PUC notes that if wireless carriers could be reassigned to a service specific overlay, 232 NXX codes could be reclaimed "and NPA relief for the two existing Houston area NPAs could be deferred **for a year or more**".²⁴ Sprint PCS likewise reports that discovery in the Colorado NPA relief proceeding likewise proved "the benefit to be derived from requiring wireless carriers to return their assigned NXXs as a solution to number exhaustion is *de minimus*".²⁵ Sprint PCS reports that only 170 NXXs would have been returned and that it was estimated that the relief to be derived from the proposed take-back would likely not last more than a year or two.²⁶ Quite simply, any relief supplied by a wireless-only overlay is minimal at best and is caused not by the fact that wireless is being segregated but by the fact that 792 new NXXs are being introduced.

²¹ State Advocates, p. 6-7.

²² Telecommunication Act/NPA Order, para. 306.

²³ State Advocates, p. 6 (emphasis added).

²⁴ Texas PUC, pp. 2-3.

²⁵ Sprint PCS, p. 3.

²⁶ Sprint PCS, p. 3.

Such short term relief does not justify the tremendous burden such a take-back would place on the wireless industry and its customers, regardless of the competitive impact.

Introducing 792 NXXs for wireless use only is a terrible waste of resources. As the State Advocates comments demonstrate, in the St. Louis 314 NPA, despite the presence of two cellular competitors since 1984, the PCS operations of Sprint PCS and AT&T, the SMR operations of Nextel and the presence of numerous paging companies—wireless has 160 NXXs assigned to it, which includes only 18 NXXs being added in 1997. Sprint PCS indicates that the same is true in the Colorado relief effort where only 170 wireless NXXs have been assigned. To impose wireless-only overlays in such situations would waste NPA resources since hundreds of NXXs would be stranded in each wireless NPA and be unavailable for wireline growth. As the North American Numbering Plan Administrator (NANPA) noted in the Ameritech Order proceeding “NANPA has long opposed service-specific code assignments in the strong belief that this can lead to a waste of valuable code resources”.²⁷ Reserving 792 NXXs for wireless-only use in an area is simply inefficient and would likely result in an exhaust of NPA codes. Even more inefficient would be to adopt a “voluntary wireless NPA” as proposed by Omnipoint.²⁸

III. CONTINUATION OF THE PROHIBITION OF SERVICE SPECIFIC OVERLAYS PROMOTES COMPETITION.

Ad Hoc, Texas PUC and the State Advocates make broad unsupported statements that competition between wireless and wireline does not exist.²⁹ As GTE explains the specific level of competition between various services was not a basis for the Commission’s previous

²⁷ Reply by Bell Communications Research, Inc., as Administrator of the North American Numbering Plan, IAD. 94-1102, (filed September 29, 1994), p. 3.

²⁸ Comments of Omnipoint Communications, Inc., p. 2-3.

²⁹ See, Ad Hoc, pp. 2-3; Texas PUC, pp. 4-5; State Advocates, pp. 9-10.

determination to prohibit service and technology specific overlays—likewise evidence of the level of competition should not be considered in any review of the merits of that decision.³⁰

Further, in contrast to the unsupported statements of those wanting the Commission to reverse itself, various other commentators cite specific examples of wireless and wireline competition.³¹ What is certain is that if a wireless-only overlay is instituted, the potential for effective competition between wireless and wireline basically disappears. Wireless cannot compete effectively against wireline if wireless carriers are forced to incur the costs associated with reprogramming handsets and returning numbers and are segregated into a unique NPA.

Ad Hoc's statement that the burden associated with the reprogramming of wireless phones has been "materially altered" since the Ameritech Order is simply untrue. Ad Hoc claims that in most cases with keystroke -programmable phones "most customers can perform this task themselves, either by following written instructions from their carrier or by having their carrier walk them through it over the phone".³² Ad Hoc overlooks the simple fact that for the phone to work, the change in the number must be made simultaneously in the network and in the phone. Further, most cellular carriers have a large imbedded base of customers, the majority of whom do not have such keystroke programmable phones but instead have a large array of handsets of different vintages and manufacturers. Thus, performing a call-in reprogramming effort for cellular would require the identification of particular equipment and sorting process to determine which customers can take part via phone and which cannot—or it being left to the customer, with notice and appropriate education, to determine whether the phone can be reprogrammed via call-in. In addition such a program would require staffing on phones to walk the customers through the

³⁰ Comments of GTE Service Corporation, pp. 6-7.

³¹ Comments of Vanguard Cellular Systems, Inc., p. 6; BellSouth Comments, pp. 2-3; CTIA, p. 9

³² Ad Hoc, p. 11.

reprogramming and appropriate staffing in the stores for those who do not have keystroke programmable phones. The introduction by some manufacturers of some keystroke programmable phones does little to lessen the burden on wireless carriers, especially established cellular carriers, in the event of a take-back. Even a new PCS competitor such as Sprint PCS, which would have only the latest (i.e. post 1994) in technology in handsets and a limited number of types of handsets within its customer base, estimates its costs would be between \$20-25 per unit.³³ Ad Hoc's attempt to minimize the effect of the reprogramming fails.

The State Advocates' claim that the prohibition on wireless-only overlays has harmed competition is equally without merit. The State Advocates and Ad Hoc both claim that CLECs are disadvantaged by the prohibition on wireless-only overlays.³⁴ The basis of the argument apparently is that some technologies are more important than others and are thus entitled to existing NPA numbering resources while other "lesser technologies" should be forced to give their numbers back and be segregated to a new NPA. The true merit of the argument and claim is shown by the fact that the only two CLECs commenting, MCI and Teleport, both oppose any technology specific overlay including a wireless-only overlay.³⁵

SWB Wireless also takes exception to Ad Hoc's claim that certain actions taken by some state utility commissions to lessen the burden of geographic splits on the consumer somehow negate a wireless carrier's right to non-discriminatory treatment in regards to numbering resources.³⁶ For example, many times a state commission will allow for the grandfathering of wireless numbers in the event of the splitting of a local calling scope. This is because the wireless

³³ Sprint PCS, p. 6 and accompanying Affidavit.

³⁴ State Advocates, p. 9-10; Ad Hoc, p. 10.

³⁵ Comments of MCI Telecommunications Corporation, p. 1; Teleport Communications Group, Inc. Comments, pp. 4-6.

³⁶ Ad Hoc, pp. 6-7.

numbers were not assigned within the local service area on a geographic basis and thus the consumers with the numbers will be scattered on both sides of the new split line. The state utility commissions realize that generally the wireless customer is also a wireline customer and thus it is not a case of one group of customers being advantaged over another group of customers. Rather, common sense dictates that it is better to allow the consumer to decide if possible whether his/her calling patterns and particular situation favor a wireless number in the old or new NPA. Thus, in Missouri for both the 816 and 314 NPAs, the grandfathering of wireless numbers had the support of the entire industry technical committee, which included the Missouri Office of Public Counsel, the consumer advocate.³⁷ Such grandfathering did not include a duplication of NXXs in the new NPA.³⁸ Likewise, the Texas PUC has adopted grandfathering of wireless numbers without a duplication of NXXs in the new NPA.³⁹ The common sense pro-consumer solution of allowing the grandfathering of wireless numbers in a geographical split for the benefit of consumers simply does not equate to a reason to treat wireless carriers in a discriminatory manner.

IV. WIRELESS PARTICIPATION IN NUMBER POOLING IS NOT ESSENTIAL FOR EFFICIENT ALLOCATION OF NUMBERING RESOURCES..

Ad Hoc and the State Advocates claim that the inability of wireless carriers to participate in number pooling supports the imposition of a wireless-only overlay.⁴⁰ State Advocates suggest that the “inability of wireless carriers to use LNP based numbering solutions should be accommodated, at least initially, by utilizing a new overlay code only for wireless or mobile services”.⁴¹ Thus, the argument seemingly is because wireless is unable to practically take

³⁷ Report of Technical Committee 314 NPA Exhaust, Case No. TO-96-1, September 1997; Report of Technical Committee 816 NPA Exhaust.

³⁸ Id.

³⁹ See, e.g., Order on Rehearing, PUC Consolidated Docket No. 14447, Texas Public Utility Commission, Ordering Paragraph 1 © (April 29, 1996).

⁴⁰ Ad Hoc, p. 7-9; State Advocates, pp. 7-8.

⁴¹ State Advocates, p. 8.

numbers in 1,000 blocks, 792 NXXs should be assigned for wireless use only, all in the name of number conservation. Again, assignment of NPAs for service specific use results in a waste of numbering resources.

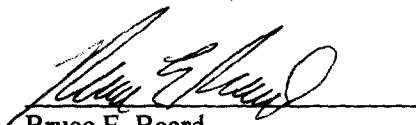
From a practical standpoint, the inability of wireless carriers to support number pooling will not affect the efficient use of the numbering resource. Wireless carriers do not have a need to emulate landline rate centers and thus generally serve their service area from as few rating points as possible, sometimes as few as one. Whereas a CLEC may need a block of numbers in each rate center, the wireless carrier merely needs a block of numbers. Further, because the wireless carrier's use of the numbers is not bound by the wireline rate center boundaries, they can use their numbers more efficiently resulting in a higher utilization factor. Thus, the ability or inability of wireless carriers to participate in number pooling will not materially alter the effectiveness of number pooling as a numbering conservation measure. Likewise, the ability or inability to participate in number pooling is not a reason for the Commission to reverse itself regarding service specific overlays.

CONCLUSION

For the reasons stated herein and in SWB Wireless' initial comments, the Commission should refrain from instituting a rulemaking, should deny the Connecticut Petition and should continue to explore number conservation measures with the input of the states, including the state consumer advocates, through the work of the Numbering Resource Optimization Working Group and the North American Numbering Council.

Respectfully Submitted,

SBC WIRELESS, INC.

A handwritten signature in black ink, appearing to read "Bruce E. Beard", written over a horizontal line.

Bruce E. Beard

Jeanne A. Fischer

13075 Manchester Road, 100N

St. Louis, MO 63101

(314) 984-2010

Carol L. Tacker

Vice President & General Counsel

17330 Preston Rd., Ste. 100A

Dallas, TX 75252

(972) 733-2005

Betsy Granger-Stover

General Attorney


4420 Rosewood Drive

Pleasanton, CA 94588

(510) 227-3140

Certificate of Service

I, Bruce E. Beard, do hereby certify that a copy of the foregoing Reply Comments of SBC Wireless, Inc., was sent U.S. mail, postage pre-paid, or otherwise hand delivered* this 18th day of May, 1998, to the following:


Bruce E. Beard

ITS*

1231 20th Street, N.W.
Washington, DC 20036

Ms. Jeannie Grimes*
Federal Communications Commission
2000 M Street, N.W., Room 235
Washington, DC 20554

Mr. Robert S. Foosaner
VP & Chief Regulatory Officer
Nextel Communications, Inc.
1450 G. Street, N.W., Ste. 425
Washington, D.C. 20005

Mr. M. Robert Sutherland
Theodore R. Kingsley
BellSouth Corporation
1155 Peachtree Street, N.W., Ste. 1700
Atlanta, GA 30309-3610

Jean L. Kiddoo
Eliot J. Greenwald
SNET Cellular, Inc.
3000 K Street, N.W., Ste. 300
Washington, DC 20007-5116

S. Mark Tuller
VP, Sec'y & General Counsel
Bell Atlantic Mobile, Inc.
180 Washington Valley Road
Bedminster, NJ 07921

Mr. John M. Goodman
Attorney for Bell Atlantic
1300 I Street, N.W., Suite 400W
Washington, DC 20005

Mr. Mark J. O'Connor
Piper & Marbury, L.L.P.
1200 19th Street, N.W., Seventh Floor
Washington, DC 20036

Raymond G. Bender, Jr.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave., N.W. #800
Washington, D.C. 20036

Lawrence E. Sarjeant
United States Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005-2164

Eric W. DeSilva
Stephen J. Rosen
WILEY, REIN & FIELDING
1776 K Street, NW
Washington, DC 20006

Mark J Golden
Cathy Handley
Personal Communications Industry Assoc.
500 Montgomery Street
Alexandria, VA 22314-1561

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092

Andre J. Lachance
GTE Service Corporation
1850 M Street, N.W.
Washington, DC 20036

Howard J. Symons
Sara F. Seidman
MINTZ, LEVIN, COHN, FERRIS
GLOVSKY & POPEP, P.C.
701 Pennsylvania Ave., N.W., Ste. 900
Washington, DC 20004

Elizabeth H. McJimsey
Attorney for Sprint Spectrum, L.P.
4900 Main St., 12th Floor
Kansas City, MO 64112

Michael F. Altschul
VP, General Counsel
Cellular Telecommunications Industry Assoc.
1250 Connecticut Ave., N.W., Ste. 200
Washington, DC 20036

Judith St. Ledger-Roty
Edward A. Yorkgitis, Jr.
Todd D. Daubert
Kelly Drye & Warren, LLP
1200 19th Street, N.W.
Washington, DC 20036

Theresa A. Zeterberg
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Ave., N.W., Ste. 200
Washington, DC 20006

Charles D. Cosson
AirTouch Communications
One California Street, 29th Fl.
San Francisco, CA 94111

Mark J. O'Connor
Piper & Marbury, L.L.P.
1200 19th Street, N.W., Seventh Floor
Washington, DC 20036

Douglas I. Brandon
Vice President-External Affairs
1150 Connecticut Ave., N.W., 4th Fl.
Washington, DC 20036

Philip F. McClelland
Assistant Consumer Advocate Counsel for
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Douglas Fraser
Assistant Attorney General
Natural Resources Division
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548

Richard S. Becker
James S. Finerfrock
Jeffrey E. Rummel
1915 Eye Street, N.W., 8th Fl.
Washington, DC 20006

David A. Gross
Pamela J. Riley
AirTouch Communications
1818 N. Street, Ste. 800
Washington, DC 20036

Glenn B. Manishin
Kenneth R. Boley
Frank V. Paganelli
Blumenfeld & Cohen – Technology Law Grp
1615 M. Street, N.W., Ste. 700
Washington, DC 20036

Teresa Marrero
Senior Regulatory Counsel – Federal
Teleport Communications Group, Inc.
Two Teleport Drive, Ste. 300
Staten Island, NY 10311